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Administration of justice at the United Nations

Report of the Sixth Committee

Rapporteur: Ms. Jacqueline Kemunto **Moseti** (Kenya)

I. Introduction

1. By its decision 65/513 of 6 December 2010, the General Assembly decided to continue its consideration of the outstanding legal aspects of the administration of justice at the United Nations during its sixty-sixth session in the framework of a working group of the Sixth Committee, and to include in the provisional agenda of its sixty-sixth session the item entitled "Administration of justice at the United Nations".

2. At its 2nd plenary meeting, on 16 September 2011, the General Assembly, on the recommendation of the General Committee, decided, in the light of resolution 65/251 and decision 65/513, to include the item in its agenda and to allocate it to the Fifth Committee, and to the Sixth Committee for the purpose of considering the legal aspects of the reports to be submitted in connection with the item.

3. The Sixth Committee considered the item at its 11th, 17th, 25th, 26th and 27th meetings, on 10, 21 and 31 October and on 1 and 2 November 2011. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/66/SR.11, 17 and 25-27).

4. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General on the amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (A/66/86 and Add.1);

(b) Report of the Internal Justice Council on the administration of justice at the United Nations (A/66/158);

(c) Report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/66/224);

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(d) Report of the Secretary-General on the administration of justice at the United Nations (A/66/275);

(e) Letter dated 23 September 2011 from the Presidents of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal to the President of the General Assembly (A/66/399);

(f) Letter dated 7 October 2011 from the Secretary-General to the President of the General Assembly transmitting a letter dated 5 October 2011 from the President of the United Nations Dispute Tribunal to the Secretary-General (A/66/507).

5. Pursuant to decision 65/513, the Sixth Committee decided at its 1st meeting, on 3 October 2011, to establish a Working Group on the Administration of Justice at the United Nations, in order to fulfil the mandate conferred by the General Assembly on the Committee, namely the consideration of the legal aspects of the reports to be submitted in connection with the item. At the same meeting, the Committee elected Mr. Kriangsak Kittichaisaree (Thailand) as Chair of the Working Group and decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. The Working Group held four meetings, on 11, 13 and 19 October 2011.

6. At the 17th meeting of the Sixth Committee, on 21 October, the Chair of the Working Group on the Administration of Justice at the United Nations presented an oral report on the work of the Working Group (see A/C.6/66/SR.17).

7. At the 26th meeting, on 1 November, the Committee decided that its Chair would address a letter to the President of the General Assembly drawing his attention to a number of specific issues relating to the legal aspects of the reports submitted under the item, as discussed in the Sixth Committee. The letter would contain a request that it be brought to the attention of the Chair of the Fifth Committee and circulated as a document of the General Assembly.

II. Consideration of proposals

A. Draft resolution A/C.6/66/L.13

8. At the 25th meeting, on 31 October, the representative of Saudi Arabia introduced, on behalf of the Bureau, a draft resolution entitled "Code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal" (A/C.6/66/L.13).

9. At the 27th meeting, on 2 November, the coordinator, the representative of Saudi Arabia, orally revised the draft resolution and its annex as follows:

(a) A new preambular paragraph was inserted after the first preambular paragraph, reading:

> "*Recalling also* the invitation made in relevant resolutions to the Sixth Committee to consider the legal aspects of the administration of justice at the United Nations, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters";

(b) In section 2 (a) of the annex to the draft resolution, the word "bias" was replaced by the word "prejudice".

10. At its 27th meeting, on 2 November, the Committee adopted draft resolution A/C.6/66/L.13, as orally revised, without a vote (see para. 14, draft resolution I).

B. Draft resolution A/C.6/66/L.14

11. At the 25th meeting, on 31 October, the representative of Saudi Arabia, on behalf of the Bureau, introduced a draft resolution entitled "Amendments to the rules of procedure of the United Nations Appeals Tribunal" (A/C.6/66/L.14).

12. At the 27th meeting, on 2 November, the coordinator, the representative of Saudi Arabia, orally revised the draft resolution by adding a second operative paragraph, reading:

> "2. *Decides* not to approve the amendment to the rules of procedure of the United Nations Dispute Tribunal contained in annex I of document A/66/86, adopted on 14 December 2010 in accordance with article 37, paragraph 1, of the rules of procedure of the United Nations Dispute Tribunal, concerning article 19 (Case management)."

13. At its 27th meeting, on 2 November, the Committee adopted draft resolution A/C.6/66/L.14, as orally revised, without a vote (see para. 14, draft resolution II).

III. Recommendations of the Sixth Committee

14. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

The General Assembly,

Recalling its resolution 62/228 of 22 December 2007, in which it decided that the Internal Justice Council should draft a code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, for consideration by the General Assembly,

Recalling also the invitation, made in the relevant resolutions, to the Sixth Committee to consider the legal aspects of the administration of justice at the United Nations, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters,

Having considered the reports of the Internal Justice Council submitted to the General Assembly at its sixty-fifth[1] and sixty-sixth[2] sessions, which contain in the annexes thereto the draft text of a code of conduct for the judges of the Tribunals,

Expressing its appreciation to the Internal Justice Council for preparing the draft code of conduct for the judges,

Approves the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as set out in the annex to the present resolution.

Annex
Code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

Preamble

Whereas the Charter of the United Nations affirms, inter alia, the determination of Member States to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations,

Whereas this right is endorsed and elaborated upon in a range of important international human rights instruments, including the International Covenant on Civil and Political Rights,

[1] A/65/86.
[2] A/66/158.

Whereas the General Assembly, in paragraph 4 of its resolution 61/261 of 4 April 2007, decided to establish an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike,

Whereas the fair resolution of employment grievances will contribute to efficiency in the work carried out by the United Nations and enhance the integrity of the Organization,

Whereas public confidence in the internal justice system and in the moral authority and integrity of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal is of the utmost importance within the working environment of the United Nations,

Whereas it is essential that judges, individually and collectively, respect and honour judicial office as a public trust, and strive to enhance and maintain confidence in the internal justice system,

And whereas the Basic Principles on the Independence of the Judiciary are designed to secure and promote the independence of judicial bodies, and can provide guidance for the internal administration of justice,

The following values and principles are adopted to establish standards for the conduct of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, to provide guidance to those judges and also to assist the staff and management of the United Nations to better understand and support the work of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal within the United Nations:

1. Independence

(a) Judges must uphold the independence and integrity of the internal justice system of the United Nations and must act independently in the performance of their duties, free of any inappropriate influences, inducements, pressures or threats from any party or quarter;

(b) In order to protect the institutional independence of the Tribunals, judges must take all reasonable steps to ensure that no person, party, institution or State interferes, directly or indirectly, with the Tribunals;

2. Impartiality

(a) Judges must act without fear, favour, or prejudice in all matters that they adjudicate;

(b) Judges must ensure that their conduct at all times maintains the confidence of all in the impartiality of the Tribunals;

(c) Judges must recuse themselves from a case if:

(i) They have a conflict of interest;

(ii) It may reasonably appear to a properly informed person that they have a conflict of interest;

(iii) They have personal knowledge of disputed evidentiary facts concerning the proceedings;

(d) Judges must not recuse themselves on insubstantial grounds. Judges must provide reasons when they decide an application for recusal;

(e) Judges must disclose to the parties in good time any matter that could reasonably be perceived to give rise to an application for recusal in a particular matter;

(f) Judges must not participate in the determination of a case in which any member of their family is a litigant or represents a litigant, or in the outcome of which any member of their family has a significant interest;

(g) In order to determine whether they should recuse themselves from any matter, judges must be aware of their personal and fiduciary financial interests and shall, as far as reasonably possible, make efforts to be informed about the financial interests of members of their immediate family;

(h) (i) Judges must not directly or indirectly negotiate or accept any remuneration, income, compensation, gift, advantage or privilege that is incompatible with judicial office or that can reasonably be perceived either as a reward or as likely to influence them in favour of a particular party;

(ii) Judges may receive a token gift, decoration, award or benefit that does not result in the incompatibility or reasonable perception referred to in subparagraph (h) (i) above;

(i) Judges must not engage in financial, political or business dealings or activities, including fund-raising activities, that are inconsistent with, and reflect adversely upon, the independence and impartiality required by their status as judges, that may reasonably be perceived to exploit the judge's judicial position, or that are in any other way incompatible with judicial office in the United Nations;

3. Integrity

(a) Judges must be of high moral character and always, and not only in the discharge of their duties, act honourably and in accordance with the values and principles set out in the present Code;

(b) Judges at all times, including periods when they are not on official business, must comply with the law of the country in which they live, work or visit;

(c) Judges must inform the presiding judge of their Tribunal should they suffer from an illness or other condition that might threaten the performance of their duties;

4. Propriety

(a) Judges must exhibit and promote high standards of judicial conduct to reinforce confidence in the integrity of the administration of justice at the United Nations;

(b) Save in the discharge of judicial office, judges must not comment publicly on the merits of any case pending before the Tribunals or make any

comment that might reasonably be expected to affect the outcome of such proceedings or impair the manifest fairness of the process;

(c) Judges are bound by professional duties of confidentiality with regard to deliberations with judicial colleagues and confidential information acquired in the course of their duties;

(d) Judges, like other citizens, are entitled to freedom of expression, belief, association and assembly, but must exercise these freedoms with due regard to the values and principles set out in the present Code;

(e) Judges must not use or lend the prestige of judicial office to advance the private interests of the judge, a member of the judge's family or anyone else, nor shall judges convey the impression that anyone is in a position to influence them improperly;

(f) In their personal relations with individual staff members who are parties, legal representatives and others who appear regularly in the Tribunal presided over by them, judges must avoid situations which might give rise to the reasonable apprehension of favouritism or partiality;

(g) Full-time judges of the United Nations Dispute Tribunal must not practise law, but may give informal advice to family members, friends, charitable organizations and the like without remuneration;

(h) Judges should use their best endeavours to foster collegiality in the Tribunals. In so doing they must act courteously and respect the dignity of others, including members of the Tribunal staff;

(i) Judges may form or join associations of judges;

(j) Subject to the proper and effective performance of judicial duties, a judge may engage in any lawful activity as long as it does not bring the judicial office in the United Nations into disrepute in the mind of reasonable members of the community;

5. Transparency

Judges must observe the principle of open justice, namely that justice must be seen to be done, and take reasonable steps to ensure that this principle is honoured in the manner in which cases before the Tribunals are handled;

6. Fairness in the conduct of proceedings

(a) Judges must resolve disputes by making findings of fact and applying the appropriate law in fair proceedings. This includes the duty to:

(i) Observe the letter and spirit of the *audi alteram partem* ("hear the other side") rule;

(ii) Remain manifestly impartial;

(iii) Publish reasons for any decision;

(b) Judges must not conduct themselves in a manner that is racist, sexist or otherwise discriminatory. They must uphold and respect the principles set out in the Charter of the United Nations, the Universal Declaration of Human Rights and the

International Covenant on Civil and Political Rights. Judges must not by word or conduct unfairly discriminate against any individual or group of individuals, or abuse the power and authority vested in them;

(c) Judges must not permit Tribunal staff or legal representatives appearing before the Tribunals, or others under their direction or control, to act in a manner that is racist, sexist or otherwise discriminatory;

(d) Judges have a duty to protect witnesses and parties from harassment and bullying during Tribunal proceedings;

(e) When conducting judicial proceedings, judges must act courteously to legal representatives, parties, witnesses, Tribunal staff, judicial colleagues and the public, and require them to act courteously;

7. Competence and diligence

(a) Judges must perform all assigned judicial duties, including tasks relevant to the judicial office or the operation of the Tribunals, diligently and dispose of judicial work promptly in an efficient and professional manner;

(b) Judges must give judgement or rulings in a case promptly. Judgements should be given no later than three months from the end of the hearing or the close of pleadings or, in the case of the United Nations Appeals Tribunal, from the end of the session in which the matter is decided, unless there are exceptional circumstances;

(c) Judges must cooperate with any formal inquiry into their conduct in office;

(d) Judges must not engage in conduct that is prejudicial to the effective and expeditious administration of justice or the work of the Tribunal;

(e) When engaged in the administration of justice, judges must attend chambers during their normal working hours, as determined by the members of the Tribunal, and attend hearings and deliberations of the Tribunal during stipulated hours, unless they have a good reason not to do so. Judges must inform the presiding judge of the Tribunal in advance if they need to be absent. If they are to be absent for longer than three days, they must obtain the approval of the presiding judge of their Tribunal;

(f) Judges must respect and comply with the reasonable administrative requests of the presiding judge of the Tribunal of which they are members;

(g) Judges must take reasonable steps to maintain the necessary level of professional competence and to keep themselves informed about relevant developments in international administrative and employment law, as well as international human rights norms;

(h) Judges' judicial duties must take precedence over other duties and activities.

Draft resolution II
Amendments to the rules of procedure of the United Nations Appeals Tribunal

The General Assembly,

Recalling its resolution 63/253 of 24 December 2008, in which it adopted the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as set out in annexes I and II to that resolution,

Recalling also article 7, paragraph 1, of the statute of the United Nations Dispute Tribunal and article 6, paragraph 1, of the statute of the United Nations Appeals Tribunal,

Recalling further article 37, paragraphs 1 and 2, of the rules of procedure of the United Nations Dispute Tribunal,[1] as well as article 32, paragraphs 1 and 2, of the rules of procedure of the United Nations Appeals Tribunal,[2]

Having considered the report of the Secretary-General,[3]

1. *Approves* the amendments to the rules of procedure of the United Nations Appeals Tribunal, as set out in the annex to the present resolution;

2. *Decides* not to approve the amendment to article 19 (Case management) of the rules of procedure of the United Nations Dispute Tribunal contained in annex I of document A/66/86 and adopted by the Tribunal on 14 December 2010 in accordance with article 37, paragraph 1, of the rules of procedure.

Annex
Amendments to the rules of procedure of the United Nations Appeals Tribunal

Article 4
Panels

2. When the President or any two judges sitting on a particular case consider that the case so warrants, the case shall be heard by the whole Appeals Tribunal. If there is a tie in the voting by the judges of the whole Appeals Tribunal, the President shall have a casting vote.

Article 9
Answers, cross-appeals and answers to cross-appeals

4. Within 45 days of notification of the appeal, a party answering the appeal may file a cross-appeal, accompanied by a brief which shall not exceed 15 pages, with the Appeals Tribunal stating the relief sought and the grounds of the cross-appeal. The cross-appeal may not add new claims.

6. The provisions of article 9.1 to 9.3 and 9.5 apply, mutatis mutandis, to a cross-appeal and answer to a cross-appeal.

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[1] Resolution 64/119, annex I.

[2] Ibid., annex II.

[3] A/66/86 and Add.1.

Article 18 *bis*
Case management

1. The President may, at any time, either on a motion of a party or of his or her own volition, issue any order which appears to be appropriate for the fair and expeditious management of the case and to do justice to the parties.

2. If, before the opening date of the session during which the case is to be considered, the appellant informs the Appeals Tribunal, in writing, with notice to the respondent, that he or she wishes to discontinue the proceedings, the President may order the case to be removed from the register.

3. If an action has become devoid of purpose and there is no longer any need to adjudicate it, the President may, at any time, of his or her own volition, after having informed the parties of that intention and, if applicable, received their observations, adopt a reasoned order.

4. The President may designate a judge or a panel of judges to issue any order within the purview of the present article.

Article 19
Adoption and issuance of judgements

2. Judgements shall be issued in writing and shall state the reasons, facts and law on which they are based. Summary judgements may be issued at any time, even when the Appeals Tribunal is not in session. They shall be adopted by panels of three judges designated by the President.